

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 1038 - SB 834

March 15, 2011

SUMMARY OF BILL: Broadens the Class A felony offense of aggravated vehicular homicide by adding to the existing prohibited blood alcohol concentration (BAC) of twenty-hundredths of one percent (.20 %), the alternative prohibited blood concentrations of either a BAC of eight-hundredths of one percent (.08%) or a blood concentration of any amount of methamphetamine. Removes the current requirement that a defendant have a prior conviction for either driving under the influence (DUI) or vehicular assault in conjunction with the prohibited BAC.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$664,200/Incarceration*

Assumptions:

- Currently, a person commits the Class A felony of aggravated vehicular homicide who recklessly kills another by the operation of a motor vehicle, as the proximate result of the person's alcohol or drug intoxication, if the defendant has two or prior convictions for DUI or vehicular assault; has one or two more prior convictions for the offense of vehicular homicide; or, at the time of the offense, there was 0.20 percent, or more, by weight of alcohol in the defendant's blood and the defendant had one prior conviction for DUI or vehicular assault.
- According to the information reported by the National Highway Safety Traffic Administration (NHSTA) Fatality Analysis Reporting System, there has been an average of six fatalities with a recorded BAC of .08 percent in each of the past three years and an average of nine with a recorded BAC of .20 percent.
- The Department of Correction (DOC) assumes there will be an increase of one-sixth ($6 \times .17 = 1.02$) in the number of convictions for those who have a BAC of .08 percent or more and any blood concentration of methamphetamine. It is also assumed there will be an increase of one-third ($9 \times .33 = 3$) in the number of convictions for those who have a BAC of .20 percent or more.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years.

- According to the Department, 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law.
- Population growth with the 46.4 percent recidivism discount will result in one offender with a BAC of .08 percent and any methamphetamine and two offenders with a BAC of .20 percent or more. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on three offenders.
- According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The average post-conviction time served is 16.68 years (6,092.37 days) for a Class A felony and 1.97 years (719.54 days) for a Class D felony.
- DOC assumes there will be a total of three additional Class A felony offenders who would have been charged under current law with a Class D felony of reckless homicide, driving under the influence resulting in death, or vehicular assault and will serve an additional 14.71 years (16.68 years for a Class A – 1.97 years for a Class D). The cost per offender in the tenth year is \$221,414.55 (\$60.62 x 3,652.50 days). The total additional operating cost for three offenders is \$664,243.65 (\$221,414.55 x 3).
- According to the District Attorneys General Conference, the additional number of cases generated by the proposed bill will not significantly impact their caseloads. Any additional cost can be accommodated within existing resources without an increased appropriation or reduced reversion.
- According to the Department of Safety, the Department currently revokes the licenses of drivers in aggravated vehicular homicide cases; therefore, there is not an impact on programs or personnel.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc